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In re Application of:  
RUSSELL, James A., et al.  
U.S. Application No.: 10/591,224  
PCT No.: PCT/CA2005/000357  
International Filing Date: 04 March 2005  
Priority Date: 04 March 2004  
Attorney Docket No.: Russell-4  
For: TOLL-LIKE RECEPTOR 2 (TLR-2)  
HAPLOTYPES PREDICT PATIENT  
OUTCOMES

DECISION ON PETITION  
(37 CFR 1.182)

This decision is issued in response to the "Petition To Vacate Holding Of Abandonment" filed 21 November 2008, and supplemented on 09 February 2009, treated herein under 37 CFR 1.182. Applicants have paid the required \$400 petition fee.

**BACKGROUND**

On 04 March 2005, applicants filed international application PCT/CA2005/000357. The international application claimed a priority date of 04 March 2004, and it designated the United States. On 15 September 2005, the International Bureau (IB) communicated a copy of the international application to the United States patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 04 September 2006.

On 31 August 2006, applicants filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee.

On 02 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497, the surcharge for filing these materials later than thirty months after the priority date, and additional sequence listing materials were required.

On 02 June 2007, applicants filed a response to the Notification Of Missing Requirements, including executed declarations, payment of the required surcharge, and sequence listing materials. However, the transmittal letter used by applicants in filing this response incorrectly identified the application to which the accompanying materials were directed. Specifically, the application number was listed as 10/592,224. Based on the incorrect application

number provided by applicant, the materials filed by applicants on 02 June 2007 were placed in U.S. application file 10/592,224, rather than the present application.

On 27 February 2008, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a timely response to the Notification Of Missing Requirements mailed 02 April 2007.

On 21 November 2008, applicants filed the "Petition To Vacate Withdraw Holding Of Abandonment" considered herein. The petition asserts that applicants filed a timely and proper response to the Notification Of Missing Requirements, including an executed declaration, on 04 June 2007. The petition asserts that no fee should be required because "the holding of abandonment is erroneous and is entirely the fault of the PTO."

### DISCUSSION

As noted above, applicant incorrectly directed the response to the Notification Of Missing Requirements to a separate U.S. application, 10/592,224. A timely response to the Notification Of Missing Requirements was therefore not filed by applicants in the present application. Under such circumstances, a petition under 37 CFR 1.182 is required to correct applicants' error so as to permit the materials filed on 02 June 2007 (misdirected to application number 10/592,224) to be treated as having been filed in the present application, 10/591,224, on 02 June 2007 as a timely response to the Notification Of Missing Requirements, as necessary to avoid abandonment of the present application. Applicants' present petition has therefore been treated under 37 CFR 1.182.

Applicants' 09 February 2009 supplement to the present petition was accompanied by payment of the required petition fee. In addition, a review of the documents filed 02 June 2007 confirms that the proper application number was included therein, specifically, on the copy of the Notification Of Missing Requirements included with such submission, and on the sequence listing statement included in such submission.

Applicants' present submission satisfies the requirements for a grantable petition under 37 CFR 1.182. Accordingly, the response to the Notification Of Missing Requirements and accompanying materials filed 02 June 2007 will be treated as having been filed in the present application, 10/591,224, on 02 June 2007 as a timely response to the Notification Of Missing Requirements mailed 02 April 2007.

It is noted that the declarations filed by applicants comply with the requirements of 37 CFR 1.497.

### CONCLUSION

The petition under 37 CFR 1.182 is **GRANTED**.

The response to the Notification Of Missing Requirements filed 02 June 2007, including the executed declaration, surcharge payment, and sequence listing materials, will be treated as

having been filed in the present application on 02 June 2007 as a timely response to the Notification of Missing Requirements mailed 02 April 2007.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 27 February 2008, based as it was on applicants' failure to timely file herein a response to the Notification of Missing Requirements mailed 02 April 2007, is hereby appropriately **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision, including review of the sequence listing materials filed by applicants. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 02 June 2007.

A handwritten signature in black ink, appearing to read 'rll n'.

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